

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

IN THE MATTER OF LOCAL RULES	§	Entered April 1, 1989
FOR THE BANKRUPTCY COURT	§	GENERAL ORDER NO. <u>89-11</u>
SOUTHERN DISTRICT OF TEXAS	§	

ORDER ADOPTING LOCAL RULES

The attached Local Rules are adopted for the United States Bankruptcy Court for the Southern District of Texas, effective April 1, 1989.

Signed, with the unanimous consent of the Bankruptcy Judges in active service and ratified by the United States District Court for the Southern District of Texas, on April 1, 1989.

James DeAnda
Chief Judge
United States District Court

BANKRUPTCY RULES
FOR THE SOUTHERN DISTRICT OF TEXAS

APRIL 1, 1989

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LOCAL RULES
of the
UNITED STATES BANKRUPTCY COURT
for the
SOUTHERN DISTRICT OF TEXAS

Rule 1001. General

- (a) These are the Local Rules of the United States Bankruptcy Court for the Southern District of Texas, adopted under Bankruptcy Rule 9029 for all proceedings under Title 11 of the United States Code.

- (b) These rules are effective April 1, 1989.
- © They may be cited as the 'Bankruptcy Local Rules or "BLR" with the Local Rules of the District Court cited as DLR". The Bankruptcy Rules may be cited as BR.
- (d) The Interim Rules and Forms for Chapter 12 by the Advisory Committee on Bankruptcy Rules are adopted as a part of these rules.
- (e) On motion or sua sponte, a judge may avoid or modify these rules for the convenience of the parties or in the interest of justice.
- (f) Admission, designation, and discipline are governed by the local rules of the district court.
- (g) Traditional, formal courtroom etiquette is required of all who appear in court as illustrated in Appendix A.
- (h) Supplements and amendments to all applications, schedules, and reports shall be clearly marked to identify added or changed information.
- (I) All papers filed must be accompanied by a certificate of service; although the parties whom the rules require to be served vary, every certificate of service must contain: names and addresses of those served, manner of service, and name and address of the server. If service is not required, the certificate of service must explain why service is obviated.
- (j) Orders. Draft orders must be filed with motions and oppositions.
 - (1) "Orders" includes orders, judgments, and decrees.

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- (2) The drafts must follow Federal Rules 54(a) and 58, omitting recitations and being a separate document.
- (3) The terms of the order must describe the relief granted or denied with particularity, briefly, and without reference to another document.
- (k) Definitions.
 - (1) Except when a matter is before a district court, references to "court," "judge" and "clerk" mean "United States Bankruptcy Court," "bankruptcy judge" and "clerk of the United States Bankruptcy Court."
 - (2) "Supporting documents" means all lists, statements, schedules, plans, and similar instruments required by the statutes or rules to accompany or follow a filing in bankruptcy.
 - (3) "File" means to deposit in the custody of the clerk of the United States Bankruptcy Court for the Southern District of Texas.
 - (4) "Motion" includes applications and all other requests for orders and

actions that require court approval; "movant" includes "proponent."

- (5) Except where specifically designated as "U.S. Trustee", "trustee" means the trustee appointed in a Chapter 7, 11, 12 or 13 case.

Rule 1002. Voluntary petitions.

- (a) Contemporaneously with the filing of a voluntary bankruptcy petition, the party shall file in triplicate the

- (1) original Petition Questionnaire and
- (2) Debtor Information Sheet in Appendix B.

Failure to file these forms, properly completed, may be a want of prosecution under BR 1017.

- (b) Appendix C prescribes the number of copies of the petition to be filed.

- © Petitions shall conform to Official Bankruptcy Form No. 1 and BR 1005, with all information completed by petitioner. Voluntary petitions shall have attached:

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- (1) Either the bankruptcy schedules and statements and an alphabetized mailing list of all creditors showing their complete names and addresses, including zip codes. When there is a nondebtor spouse, the list of creditors shall include the complete name and address, including zip code of the nondebtor spouse, or

- (2) A voluntary petition for which schedules are not required must be accompanied by a brief description of the debtor's assets and an alphabetized mailing list of all creditors showing their complete names and addresses, including zip codes. When there is a nondebtor spouse, the list of creditors shall include the complete name and address, including zip code of the nondebtor spouse.

Failure to file these forms, properly completed, may be a want of prosecution under BR 1017.

- (d) The mailing list of creditors showing their complete names and addresses, including zip codes, in the court's form described in Appendix D, must be filed within five days of the filing of a voluntary petition. In all voluntary Chapter 11 and 12 cases and within fifteen days after the entry of an order of relief in an involuntary case, the debtor shall also file a list of its twenty largest unsecured creditors together with their addresses and amounts owed them, excluding insiders and governmental entities.
- (e) The debtor must maintain the current and fully accurate address of the debtor and debtor's counsel on file with the clerk at all times his case pends. A change of address of debtor or his counsel with a conspicuous designation of the case name and number shall be separately reported to the clerk, the trustee and the U.S. Trustee immediately.

Rule 1003. Involuntary petitions.

- (a) The petitioner is responsible for service. Notwithstanding BR 7004(f), petitioning creditors must initiate service of a summons for an involuntary petition within seventy-two (72) hours of their receiving the summons from the clerk. Petitioning creditors must prepare the form of summons for issuance by the clerk. If service is not initiated by then, the court may impose sanctions upon the petitioning parties, including dismissal of the case.

A certificate of service must be filed or a new summons must be requested within ten days of issuance of the summons or the Court may without further notice dismiss the case for want of prosecution.

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- (b) Service by publication. If service of the summons cannot be accomplished within thirty (30) days after issuance, the petitioning creditors shall move for service by publication under BR 7004© or the court may impose sanctions on them, including dismissal of the case.
- © Debtor's counsel. Counsel for an alleged debtor shall file with the clerk an appearance within two days of
 - (1) Counsel's receipt of the summons in an involuntary case, or
 - (2) On counsel's notice of the entry of the order for relief, whichever shall first occur.
- (d) Hearing. If a response opposing relief is timely filed, it is the responsibility of the petitioning entity to move for a hearing date.
- (e) Upon entry of an order for relief, the petitioning creditor shall immediately serve the U.S. Trustee with a copy of the order.

Rule 1007. Supporting documents.

- (a) The period in BR 1007© and 3015 within which to file the Chapter 13 statement, plan, and statement of affairs shall be strictly enforced. The trustee shall file a deficiency notice in the event of a failure to comply with the limits of BR 1007 and 3015 and of a deficiency in the Chapter 13 statement, plan, or statement of affairs; if the deficiency is not remedied or the pleading is not filed within eleven days, with copies served on the trustee, the case may be dismissed without further notice.
- (b) Requests for an extension of time must be for a specific calendar date; the movant shall at least comply within the time period requested. Inaction by the court on the motion does not extend the time for compliance beyond the period of the request.
- © On Schedules A-2 and A-3, arrange the creditors in alphabetical order.
- (d) In individual or joint cases, B-4 schedules shall contain a detailed inventory of the debtor's personal property, with each item valued separately.

- (e) Number of Copies. The number of copies of schedules and statement of affairs that must be filed is the same as number of copies the of petition required by BLR 1002 and Appendix C.
- (f) Individual debtors (or joint ones) in Chapter 7 or Chapter 11 cases shall file, contemporaneously with the schedules of assets and liabilities the schedules of current income and expenditures (Official Bankruptcy Form 6A).

Rule 1009. Amendments of voluntary petitions and their supporting documents.

- (a) If an amendment or supplement is filed to add a creditor or to change the status, classification, or amount owing a creditor, the debtor shall, no later than the second business day after the filing:
 - (1) Serve the amendment by first class mail, postage prepaid, on the trustee, U.S. Trustee and all creditors affected by the amendment, and
 - (2) File a certificate of mailing, and
 - (3) Provide the clerk with mailing cards.
- (b) Amendments to schedules must be redlined to identify added or changed information.
- © If it appears to the court or trustee that the supporting documents need to be amended to reflect changes or more accurately to reflect the debtor's circumstances, the court or trustee may notify the debtor of the need for amendments,, specifying the items, documents, and time for amendment. A failure to comply with the notice may result in the court dismissing the case without further notice.

Rule 1015. Joint administration and consolidation.

- (a) Motions for joint administration must specify the activities in the cases that are to be joined and be accompanied by an order in the form in Appendix E.
- (b) A motion for joint administration or consolidation shall be made to the judge with the lowest case number.
- © A motion for consolidation or joint administration of cases shall be served, at a minimum, on: all creditors, all parties requesting notice, and the U.S. Trustee.

Rule 1017. Dismissals.

- (a) For BR 1017, want of prosecution includes, but is not limited to:
- (1) Failure to file complete schedules on time;
 - (2) Failure of a debtor, not an individual, to file its Chapter 11 case by an attorney at law;
 - (3) Failure to pay filing fees;
 - (4) Failure to file on time the prescribed mailing list of creditors in the form in Appendix D;
 - (5) Failure to include with the bankruptcy petition a required list of unsecured creditors;
 - (6) Failure to include with the bankruptcy petition the forms in BLR 1002;
 - (7) Failure timely and diligently to prosecute the filing of a plan, disclosure statement, or other document required by the code, bankruptcy rules, or orders;
 - (8) Failure to appear at a hearing or an initial or subsequent Section 341 meeting; and
 - (9) Failure by an individual doing business under an assumed name of a putative corporation to designate precisely which individual or corporation is seeking protection; and
 - (10) Failure to pay the U.S. Trustee quarterly fees.
- (b) Motions to dismiss for want of prosecution must be served under BLR 9007 and 9013(a) and (b).
- © The Court may, on its own motion, after notice to the debtor and to all scheduled creditors and equity interest owners, dismiss a case for want of prosecution unless
- (1) The debtor timely cures the deficiency or
 - (2) A party requests a hearing within twenty (20) days from service of the notice and shows cause why the case should not be dismissed.
- (d) The Court may summarily dismiss without further notice a case for want of prosecution based on the occurrence of any events in BLR 1017(a)(1), (2), (3), (4), (5), (6) or (8).

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Rule 1019. Conversion of Chapter 11, 12 or 13 Cases to
Chapter 7.

For all cases filed before November 26, 1986, and only until October 19, 1989, debtors-in-possession or trustees in each converted case, shall file a report and account under B.R. 1019(6) in the form in Appendix F. For all cases filed on or after November 26, 1986, and in all cases beginning October 20, 1989, debtors-in-possession and trustees in each converted case shall prepare the final report and account under B.R. 1019(b) in the form prescribed by the U.S. Trustee

and deliver it to the U.S. Trustee for review prior to filing with the court. The court may sanction non-complying debtors, debtor's attorneys, or trustees, including dismissal of the case for want of prosecution.

Rule 2002. Notices to creditors, equity security holders, and United States.

- (a) A movant shall serve all notices of a hearing that are required to be served, under BR 2002 or otherwise,, and must file the certificate of service required by BLR 9007(a) except as provided in BRX-1008(c).

Rule 2003. Meeting of creditors or equity security holders.

Under BR 2003 (b) (1) (1) these persons will preside at a meeting of creditors:

- (a) In Chapter 7 cases, the interim trustee or trustee, unless creditors who may vote for a trustee under SS 702(a) and who hold a majority of claims designate another person;
- (b) In Chapter 11 cases, the U.S. Trustee or his designee; and
- © In Chapter 13 cases, the Chapter 13 trustee.

Rule 2004. Examination.

- (a) The purpose of this rule is to avoid a motion and court order for a 2004 examination unless an objection is filed.
- (b) Duty to confer. Before giving notice of a proposed examination under paragraph © below,, the movant shall confer with the proposed examinee (through counsel if represented) to arrange for an agreeable date, place, and

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time for the examination. Failure to confer shall be grounds to quash under paragraph (e) below.

- © Notice. Not less than ten (10) days' written notice of a proposed examination shall be given to the entity to be examined, its counsel, and to other affected parties under BLR 9013(a). The entity to be examined and other affected parties shall have five (5) calendar days to respond or object to the proposed examination. The notice shall apprise the party of the scope of the examination and categories of documents to be produced.
- (d) No order required. If no response is served, the notice to conduct an examination under this rule is deemed ordered, without requiring the entry of an individual order. The notice of intent to conduct a Rule 2004 examination need not be filed.
- (e) Motions to quash or for protective order. If the party to be examined has objections, he has the burden to seek relief from the court by a motion. The motion shall comply with BLR 9007 and 9013.

- (f) Sanctions. If anyone has been unreasonable in seeking or resisting discovery under BR 2004, the court may impose sanctions. The court may' condition the taking of a examination on terms that are just and promote efficient administration.
- (g) Exception of adversary proceedings. This rule does not apply to adversary proceedings and to contested matters.
 - (1) The discovery provisions of Part VII of the Bankruptcy Rules apply in adversary proceedings.
 - (2) BR 9014 applies to discovery in contested matters.

Rule 2015. Duty to report under Chapters 7, 11, 12, and 13.

For all cases the trustee, debtor-in-possession, or debtor shall conform with the reporting and recordkeeping requirements of the Code and the U.S. Trustee.

Rule 2016. Compensation and reimbursement.

- (a) Applications for compensation shall cover each element in BR 2016 and In re First Colonial Corp. of America, 11 CBC 133, 544 F.2d 1291, (5th Cir. 1977).

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- (b) Of every prior application filed, the application shall specify: the date, amount, and disposition, including amounts allowed, retained, and paid.
- © Applications shall have attached to them copies of the order appointing the applicant, orders limiting notice, and the applicant's Rule 2016(b) statement.
- (d) In the court-required form, applications shall include a detailed description of:
 - (1) Services by date and person for whom compensation is sought;
 - (2) Expenses, except that charges for copies, postage, messengers, and similar expenses may be summarized if the basis for the summary is clearly shown, like the charge per copy;
 - (3) Each major task, the reason for that task, the results obtained or anticipated, and the outcome had the task not been performed; and
 - (4) Approximate time devoted by each person for whom compensation is sought for each task.
- (e) The application or a notice under BLR 9007(e) must be served on all requesting notice, the trustee, the U.S. Trustee, and other parties as the court directs. At a minimum, the notice must specify the amount of fees and expenses requested.
- (f) Objections to applications for compensation filed by the U.S. Trustee or trustee must be served only on the applicant, debtor, and the debtor's

counsel. A hearing on such objection will be noticed by the applicant to all interested parties and other parties requesting notice or other parties as the court directs pursuant to B.R. 2002(a).

Rule 3002. Notice of the filing of proofs.

Creditors filing a proof of claim and interests in Chapters 11, 12 and 13 cases shall serve a copy of it on the trustee and debtor. This requirement is solely to give notice to the debtor of the claims on file; failure to comply is not a ground for disallowance, but it may be a predicate for sanctions.

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Rule 3003. Timing of proofs in Chapter 11.

In a Chapter 11 case, unless further extended by the Court for cause shown, proofs of claims shall be filed within ninety days after the first date set for the meeting of creditors under SS 341(a).

Rule 3007. Objections to claims.

- (a) On filing an objection to a claim, the objector shall obtain from the clerk a claim objection scheduling order (Appendix E), which has a date for a pretrial hearing, and shall promptly serve the order with a copy of the objection on the claimant and other parties under BR 3007.
- (b) An objection to a claim shall be accompanied by a form of order that states specifically the relief desired, not merely that the objection is granted.
- © Pretrial hearings may be waived for cause, on application to the court.
- (d) An objection may be dismissed for failure of the objector to appear at the pretrial hearing or trial or sustained on the failure of the claimant to appear at the pretrial hearing or trial.
- (e) If a trustee has been appointed, the objector shall serve the trustee with a copy of the order disposing of the objection, within ten days of its entry.

Rule 3017. Notice of disclosure statement, Chapter 11.

After approval of the disclosure statement, the proponent of a Chapter 11 plan shall transmit all notices and documents required by BR 3017(d). The proponent shall obtain the notices from the clerk and, without supplement or amendment, transmit it with other documents required to creditors and equity security holders who are entitled to vote on the plan, and the U.S. Trustee.

Rule 3020. Confirmation of Chapter 13 plans.

- (a) At the confirmation hearing of a Chapter 13 plan, objections to claims, motions filed under BR 4003(d), motions for valuation of secured claims,

reasonableness of attorney's fees, and all objections to the confirmation of a debtor's plan will be considered.

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- (b) The debtors are not required to be present at the confirmation hearing only if:
 - (1) The Chapter 13 trustee recommends confirmation;
 - (2) No objections to confirmation have been filed or all of those objections have been settled by an agreement filed before the hearing; and
 - (3) No objections to claims or motions for valuation of collateral are unresolved.
- © Interim Order of Confirmation. On request of the debtor or trustee, the court may enter an interim confirmation order in Chapter 13 cases, although objections to proofs of claim, motions of valuation, or motions under BR 4003(d) remain pending. An interim confirmation order may provide that:
 - (1) Allowed claims, not subject to outstanding motions or objections, be paid under SS 1326 despite the pendency of objections or motions relevant only to other claims; and
 - (2) Claims subject to pending motions or objections may be provided for by either:
 - (A) Escrow of the portion of the plan payments with the trustee necessary to pay that claim if it is allowed; or
 - (B) Requiring the debtor to modify his plan within thirty days to pay that claim if it is allowed.
- (d) The interest or discount rate on deferred payments made through a confirmed Chapter 13 plan must equal two percent (2%) plus the prime rate set in the Money Rates Section of the Wall Street Journal on the date the petition initiating the Chapter 13 case was filed.
- (e) A Chapter 13 Fact Form and Fee Application (Appendix H) must be filed at or before the SS 341 meeting and served on any party requesting notice, the debtor, the trustee, and the U.S. Trustee. Objections to the fee application may be raised at confirmation or in a separate hearing.
- (f) If a Chapter 13 case is dismissed the trustee must file a final report and accounting within thirty days from the entry of the dismissal.

Rule 4001. Relief from automatic stay; use of cash collateral; obtaining credit; agreements.

- (a) Relief from the Stay under SS 362.
 - (1) Motions for relief from the stay shall conform with BLR 9013(c). If movant desires to waive the requirement of a hearing within thirty days under SS 362(e), it must be stated in the caption of the pleading.

- (2) The caption shall be:
Motion of [movant's name] name1 for Relief from the Stay (waiver of Section 362(e) Requirement) if applicable.
- (3) Motions for relief from the stay shall never be combined with a request for any other relief.
- (4) When the motion is filed, the movant shall deliver to the clerk duplicate completed Notice of Preliminary Hearing on Relief from Stay (Appendix I).
- (5) WITHIN TWENTY-FOUR HOURS OF RECEIPT, THE MOVANT SHALL SERVE THE PARTIES IN INTEREST WITH THE NOTICE AND A COPY OF THE MOTION (BR 7004).
- (6) Proof of service (with the names of those served, date, and method of service) shall be filed as prescribed by Appendix J. The twenty largest unsecured creditors and parties requesting notice may be served with a notice described in BLR 9007(f) instead of a copy of the motion itself.
- (7) "Party in interest" in this subsection includes the debtor, debtor's attorney, trustee, unsecured creditors' committee, holders of liens on the property about which relief is sought (as scheduled by the debtor or as known to the movant), twenty largest unsecured creditors, and parties requesting notice.
- (8) The thirty-day limit of SS 362(e) begins to run only when a proper motion is filed, notice is issued by the clerk, and it is served by movant under BLR 4001(a)(5).
- (9) A party who objects to, or desires to participate in, the relief or a settlement (including potential objections to adequate protection liens or payments) that might result from the motion, NO LATER THAN FIVE WORKING DAYS BEFORE THE PRELIMINARY HEARING, shall:

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- (A) File an affidavit that he has conferred unsuccessfully with the movant in a good faith effort to reach an agreement, with dates and times of the conferences, and that court determination is required. A copy must be served on the movant. No request for hearing will be entertained unless preceded or accompanied by a substantive answer, response, motion to intervene, or some combination of them.
 - (B) If opposing the motion, file a written answer stating with particularity the grounds of opposition under Fed. R. Civ. P. 8 and a request for a hearing. A copy must be served on the movant.
 - (1) If against property, the answer shall identify the property interest of the opponent; and
 - (2) If the respondent is the debtor or the trustee, the answer shall state the provable value of the property and the equity realizable by the debtor after deduction of all encumbrances.
- © If the party desires only to participate in a settlement, file and serve on the movant and debtor a written response and a request for

a hearing, identifying the relief sought by respondent and his interest in the property.

- (D) This rule does not prohibit motions to intervene under BR 2018.
- (10) Affidavits of conferences with answers in opposition, which are timely filed, serve as requests for a hearing. No hearing will be held on request of the movant solely or on answers untimely filed. Requests for extensions of time to answer must be filed before expiration of the time to answer.
- (11) If neither a response and request for a hearing under (9) (A) , (B) or © and (7) nor a motion to intervene under (9) (D) is f filed on time and if the respondent does not appear at the preliminary hearing, the court may sign an order embodying a settlement about the stay relief or the provision of adequate protection, without further notice.

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- (b) Motions for the use of cash collateral must conform to BLR 9013(c).

- (1) The motion shall be served at least on:

- (A) Any entity claiming an interest in the cash collateral;
- (B) Trustee;
- © Committees;
- (D) Twenty largest unsecured creditors;
- (E) Parties requesting notice; and
- (F) U.S. Trustee
- (G) As the court directs.

- (2) The movant may request a preliminary hearing, a final hearing, or both. If a preliminary hearing is requested, the movant shall specify:

- (A) The necessity for it; and
- (B) The temporary relief sought.

- (3) The motion to use cash collateral must include conspicuously on the front page of it this statement:

If you want a hearing, you must request one in writing and you must respond to each paragraph of this motion, objecting specifically. You must file your response with the Clerk of the Bankruptcy Court within fifteen days from the date you were served and give a copy to the person who sent you this notice.

Otherwise, the court may treat this motion as unopposed and grant the relief sought.

No answer is required before a preliminary hearing.

© Obtaining credit. Motions for permission to obtain credit must comply with the rules for motions to use cash collateral. The motion must have a copy of the proposed credit arrangement attached.

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- (d) Agreement about relief from the stay, adequate protection, cash collateral, and obtaining credit.
- (1) If a debtor reaches an agreement for relief from the stay, for adequate protection, for use of cash collateral, or for obtaining credit, the interested party or debtor may move for approval of the agreement, in lieu of moving for the relief itself. The motion must have a copy of the agreement attached.
 - (2) The movant or debtor shall serve the motion on the parties required to be served in paragraph (b)(1). The motion, agreement, and certificate of service must be filed together.
 - (3) The motion shall include conspicuously on the front page of it this statement:

If you want a hearing, you must request one in writing and you must respond to each paragraph of this motion, objecting specifically. You must file your response with the Clerk of the Bankruptcy Court within fifteen days from the date this notice was mailed to you and give a copy to the person who sent you this notice. Otherwise, the court may treat this motion as unopposed and grant the relief sought.

No answer is required before a preliminary hearing.
 - (4) If an objection is filed or if the court wants a hearing, the clerk will inform movant's counsel of the hearing date, and the movant shall give notice under paragraph (b)(1) and BR 4001(d)(3).
- (e) Responses to discovery about motions for relief from stay, adequate protection, use of cash collateral, and obtaining credit are due in eleven days after service of a discovery request under BR 9006(f) instead of the thirty days under BR 7028-7036, with the reduction in response time conspicuously noted on the discovery request.

Rule 4002. Duties of debtors in possession.

- (a) A debtor-in-possession (debtor) and its counsel are responsible for strict compliance with the Bankruptcy Code, Bankruptcy Rules, and Standing Orders.

- (b) The debtor, its officers and agents, hold and manage the debtor's assets as fiduciaries for the estate; strict compliance with court orders and Bankruptcy Code §§ 363 and 1108 is required. The debtor shall prevent depletion of the assets of the business during the proceedings and shall notify its counsel immediately of a depletion or potential depletion.
- © If the debtor becomes aware of facts indicating that the continued operation of its business may not be in the best interest of the creditors or of the estate, it must immediately notify its counsel, who shall immediately notify the court and recommend a solution.
- (d) The debtor shall not pay out of property of the estate any prepetition unsecured obligation except under a confirmed plan or an order.
- (e) The debtor shall not alienate (sell, give, move, or encumber) an asset outside of the ordinary course of business except on an order.
- (f) The debtor shall avoid incurring administrative and priority expenses that funds may not be generated to pay.
- (g) The debtor shall comply fully with Title 11's tax provisions, with the deposit requirements of the Internal Revenue Code and Regulations, and with all state tax law requirements.
- (h) The debtor must pay all obligations incurred by it in the operation of its business on a current basis.
- (j) The debtor shall not use cash collateral without prior written consent of the secured creditor or an order. Counsel may be held responsible for compliance with this rule. In re Aerosmith Denton Corp., 36 B.R. 116 (Bankr. N.D. Tex. 1983).
- (k) This list of specific duties is not exclusive and does not exclude unenumerated duties or obligations imposed by law. Counsel for the debtor-in-possession is responsible to instruct the debtor of this rule immediately on his filing of the case. Counsel may be held responsible, as a fiduciary, to the estate and court, for any knowing violations by debtor.

Rule 4003. Exemptions.

- (a) If an amendment or supplement to the list of exemptions is filed after the SS 341(a) meeting of creditors, it shall be served by the party claiming the exemption (as amended or supplemented) on the trustee, creditors, and parties in interest. A proof of service shall be filed that shows the date, method, and parties served.
- (b) Objections to the amended or supplemented list of exemptions (after the Section 341(a) meeting of creditors) must be filed within thirty days from the date of service of the amended or supplemented list. Requests for

extensions must be made within the original thirty days.

- © When the clerk sets the hearing on an objection to an amended or supplemented list of exemptions, the objector shall notify the debtor (or dependent claiming the exemption) and the debtor's attorney. The prevailing party at that hearing shall serve promptly on the trustee a copy of an order entered.

Rule 4008. Reaffirmation agreements.

- (a) A motion by a debtor for approval of a reaffirmation agreement shall be filed before the time of discharge under BR 4008 and SS 524(d)-
- (b) A debtor may waive the hearing required under SS 524(d) by filing before discharge a Reaffirmation Affidavit and Waiver of Hearing and Order. (Appendix K).
- © Before the expiration of thirty days from the date of discharge the debtor shall obtain:
 - (1) a setting for the hearing of his motion; or
 - (2) submission of a motion and waiver of hearing.

A reaffirmation agreement heard or submitted after the thirty-day period will be denied as moot.

Rule 5001.

- (a) Registry of the Court. The clerk has established a registry with a local depository that will pay interest and provide security for deposits that exceed federal insurance coverage. All deposits and withdrawals from the registry will be only by court order, and withdrawals will include I accrued interest only if the order specifies it.

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(b) Costs.

- (1) Deposit for costs.
 - (A) The clerk is not required to perform a service that requires a payment unless:
 - 1. The payment is deposited; or
 - 2. A law excuses the payment or deposit in advance; or
 - 3. An order allowing payments in installments has been entered; or
 - 4. Leave to proceed in forma pauperis has been granted. 28 U.S.C. SS 1915.
 - (B) The marshal may require a deposit to cover his fees and expenses. 28 U.S.C. SS 1921(b)(2).

- (2) Bill of costs. The parties must maintain their own record of taxable costs. The clerk does not record taxable costs. An application for costs shall be made by filing a bill of costs within ten days of the entry of a final judgment. When attorneys' fees are taxable as costs, an application for them must be made with the application for other costs. Objections to allowance of the bill, the attorneys' fees, or both must be filed within five days of the bill's filing. Fed. R. Civ. P. 54(d). 28 U.S.C. SS 1920.

Rule 5005. Filing of papers.

- (a) The clerk's office of the United States Bankruptcy Court will be open for the filing of documents from 9:00 a.m. to 4:30 p.m. on court days. Filings of original petitions or applications for temporary restraining orders outside of regular business hours must be arranged. In Houston, there is an after-hours depository with a timed file stamp for filing at any time.
- (b) An original and one duplicate of all applications and motions must be filed, together with a proposed order.
- © The United States Bankruptcy Court for the Southern District of Texas has the same divisions as the District Court: Houston, Galveston, Brownsville, Corpus Christi, Laredo, McAllen, and Victoria.

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- (1) Houston is the official station for the Houston and Galveston Divisions.
- (2) Corpus Christi is the official station for the Brownsville, Corpus Christi, Laredo, McAllen, and Victoria Divisions.
- (d) Original petitions in a case under Title 11 of the United States Code for venue in any division in the Southern District of Texas may be filed in any division. All documents after the original petition and all adversary proceedings shall be filed only in the official station for the division of venue, Houston or Corpus Christi.
- (e) Depositions, interrogatories, answers to interrogatories, requests for production or inspection, responses to those requests, and other discovery material shall not be filed. When a discovery document is needed in a pretrial proceeding, those portions which are needed shall be an exhibit to a motion or response. When this material is needed at a trial or hearing it may be introduced under the Federal Rules of Evidence, Federal Rules of Civil Procedures, and Bankruptcy Rules.

Rule 5011. Withdrawal of reference and abstention.

- (a) A motion to withdraw, in whole or part, the reference to the bankruptcy court under 28 U.S.C. SS 157 shall be filed with the clerk of the bankruptcy court for delivery to the district court for determination. The timeliness of these motions is determined by the district court; however, motions are conclusively not timely if filed after the bankruptcy court has begun taking testimony in the matter which is the subject of the motion.

- (b) Abstention motions shall be accompanied by proposed recommendations for the bankruptcy judge and a proposed order for the district judge.

Rule 6004. Use, sale, or lease of property.

Notice of the use, sale, or lease of property must conform with the additional requirement that time fixed for notice and the requirements of service shall conform to BLR 9007 and 9013.

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Rule 6005. Auctioneers.

- (a) The U.S. Trustee shall establish a list of qualified auctioneers and set reasonable requirements for approval and inclusion on the list. The list shall be kept in the office of the United States Trustee and the Clerk.

An auctioneer may be removed from the list of approved auctioneers at any time by the United States Trustee. Notice of such removal shall be sent to the auctioneer, the Clerk and the auctioneer's surety.

 - (1) No auctioneer shall be authorized to conduct a sale or be included on the approved list without having filed a surety bond which has been approved by the United States Trustee in the amount of \$100,000 in favor of the United States of America.
 - (2) If the employment of an auctioneer who is not on the approved list is required, then an application for approval, setting forth the reasons and terms for such employment, shall be submitted to the Court for approval. At least 5 days notice shall be given to the United States Trustee and, if approved, the auctioneer shall file the bond required by the U.S. Trustee of approved auctioneers.
- (b) In a Chapter 7 case where the anticipated gross sales of the auction are less than \$50,000, the trustee may elect to employ an auctioneer from the list approved by the United States Trustee without application to the Court.
 - (1) If gross sales of the auction actually yield less than \$50,000, the trustee is authorized without any application to the Court to pay the auctioneer a commission of 15% of gross sales with no allowance for expenses of the auction, which are to be paid from the auctioneer's commission.
 - (2) The trustee shall file a report of such fees paid to the auctioneer and the report of sale with the Clerk and serve copies on the U.S. Trustee.
- © In all other cases where it is necessary to employ an auctioneer, an application for approval of employment shall be submitted to the Court and served upon the U.S. Trustee.
- (d) Immediately after any sale, but in no event more than ten days from the date of the sale, all proceeds shall be forwarded by the auctioneer to the trustee or debtor in possession along with the report of sale required by

B.R. 6004(f)(1).

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- (e) In all cases, except where the provisions of paragraph (b) (1) above are utilized ' an application for approval of compensation of the auctioneer must be filed.
 - (1) Auctioneers shall be allowed those expenses allowed by the Court and in addition, commissions on net proceeds of sale not to exceed 10% of the first \$50,000; 7% of the next \$50,000; 5% of the next \$50,000; 8% of the next \$100,000; and 1% on all amounts above \$250,000.
 - (2) Upon proper application and for cause the provisions of paragraph,(e)(1) may be modified.
- (f) All auctions shall be notified in accordance with B.R. 2002. In addition, there must be at least one notice of all auctions in a local newspaper of general circulation. The trustee or the debtor in possession is responsible for the proper notice of the auction and shall not allow an auction to proceed unless proper notice is given to all parties in interest, including the U.S. Trustee.
- (g) All payments to auctioneers are subject to an order of disgorgement for good cause upon motion of the Court, the trustee, the debtor in possession or the U.S. Trustee.

Rule 6007. Abandonment of property under Chapter 7.

- (a) Without notice or hearing, the trustee may abandon an item of tangible personal property if the trustee determines by appraisal or by the trustee's business judgment the property has a value to the estate of \$2,500.00 or less and if the trustee files a report of his intent.
- (b) If the value of the item of tangible personal property exceeds a value to the estate of \$2,500.00 and if the trustee or debtor in possession determines it to be burdensome, the trustee or debtor in possession shall file a notice of abandonment which conforms to the contents and service requirements of BLR 9007 and 9013.
- © If no objection to the abandonment is filed within twenty days from the service of the notice, the property may be abandoned without an order or further notice.

Rule 7003. Cover sheet.

No adversary proceeding may be filed without a completed adversary proceeding cover sheet (official Bankruptcy Form BC 104).

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Rule 7004. Summons.

The clerk shall issue summons on the filing of a complaint in an adversary proceeding on the summons form completed by the party, who will also furnish copies for service. The clerk will provide official process forms to counsel on request. Only the official summons form from the clerk properly completed will be issued. (Official Bankruptcy Forms BK 116, BK 117) 0

Rule 7007. Motions in adversary proceedings.

- (a) Motions. Motions in adversary proceedings shall conform with BLR 9013© and these rules; they shall contain citations of authority or shall be accompanied by a brief. The rules, code sections, and reasons for the relief requested shall be specified.
- (b) Submission Date. Motions that comply with BLR 9007(b) - (f) and 9013 shall be submitted to the presiding judge on the eleventh day after service, unless the motion is accompanied by a motion for emergency consideration; in that event, the judge shall determine the service and submission requirements and whether to ' have an oral hearing. The motion will be submitted to the judge on submission day (and no earlier) without the necessity of a personal appearance by counsel. A pleading not conforming with BLR 9007(b) - (f) and 9013 will not be submitted.
- © Responses. Responses to motions shall be filed under BLR 9013 by submission day. Failure of counsel to respond on time may result in the relief being granted.
- (d) Submission. Other than motions that may be presented ex parte, motions will be determined on the record, without the attendance of counsel. Requests for oral presentation may be made f or cause shown in writing with the motion or response. If oral submission is granted or if the court orders it, counsel will be notified of the date.
- (e) Judicial Discretion. The court may, at any time or place, entertain and decide a motion, shorten or extend the period for its submission, or permit or require the submission of additional argument, authorities, or supporting material. If the Judge, on deciding the motion, determines that the motion or opposition is completely wanting of support in fact or law or that the motion or opposition is vexatious, fraudulent, or chicanerous, the judge may award the prevailing party its costs, including reasonable attorneys' fees, or make that order as justice may require.

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(f) Unopposed Motions. If a motion is unopposed by all affected parties, counsel may simply state that conspicuously in the caption of the motion. In that event, the motion will be submitted immediately to the court.

Rule 7016. Pretrial orders.

- (a) scheduling orders. When an adversary proceeding is filed, a scheduling order shall be entered. The plaintiff shall serve the scheduling order on the defendants with the summons. The scheduling order is illustrated in Appendix L.

- (b) Pretrial statement. A joint pretrial statement in the form of the district court pretrial order must be filed in matters requiring trial.

Rule 7041. Settlement.

- (a) Approval of Settlements. When an adversary proceeding has been settled in whole or part, an application to compromise shall be filed in the bankruptcy case; its substance shall comply with Protective committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414 (1968). The caption of applications to compromise must identify specifically but briefly the adversary proceeding in which the settlement is proposed; however, the adversary proceeding number shall not be included in the style of the application.
- (b) Notice. The applicant shall comply with BLR 9007 and 9013, unless the settlement is of an action arising under SS 523(a) for which no notice is required.
- © Waiver of notice. The parties may move for a waiver of notice for cause.
- (d) Order and judgment. A proposed order approving a settlement must be filed with the application for approval; it will be entered in the bankruptcy case, and a separate judgment must be filed for entry in the adversary proceeding.
 - (1) The proponents of the compromise must file an order that approves the settlement with the correct style for the bankruptcy case.

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- (2) A separate judgment (with the correct, full style) must be filed in the adversary proceeding within three business days of the entry of the approval order in the bankruptcy.

Rule 7042. Consolidation of adversary proceedings.

Motions to consolidate adversary proceedings are determined by the judge to whom the case having the lower number is assigned. When proceedings are consolidated, only the lower numbered matter survives, and entries will be made only in its docket.

Rule 7055. Motions for default judgment.

When a defendant has been in default for more than ninety days without the plaintiff's having moved for a default judgment, the action may be summarily dismissed for want of prosecution.

Rule 8007. Record designation on appeal.

The bankruptcy clerk will retain the entire record. The parties must furnish the clerk with copies of the papers included in their designation of the record

on appeal; these copies will be compiled and transmitted as the record to the district court under BR 8007(b).

Rule 9001. General definitions.

Under BR 9001(5), officers, members of the board of directors, controlling stockholders, and other persons in control shall be individually responsible for performance of acts required of the debtor.

Rule 9003. Motions ex Parte.

At the discretion of the judge, these motions may be heard ex parte: applications for approval of employment of professional persons under BR 2014; motions for enlargement or reduction of time under BR 9006; and motions for shortening or limiting notice under BR 2002.

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Rule 9004. General requirements of form.

(a) Filing. When a paper is offered for filing, the original and a copy shall be delivered to the clerk; never deliver it to the individual judge.

(b) Each paper offered for filing shall:

- (1) Bear on its face the caption required by BR 1005 or BR 7010, and a statement of its character, like "Motion of John Doe for Relief from the Stay;
- (2) Be typewritten or printed legibly in ink without excessive abbreviation or obtrusive interlineation, except for references;
- (3) Bound at the top only, not in a cover, and punched at the top with two holes;
- (4) Indicate under the case number in the caption the chapter designation, like Chapter 7, Chapter 11, Chapter 12, or Chapter 13; and

© No filed instrument shall be removed from the clerk's custody without an order;

(d) If a paper does not conform to the DLRs and BLRs or if it is otherwise in an objectional form, it may be struck on motion or sua sponte.

(e) Exhibits at trial.

- (1) Exhibits that are not easily stored in a file folder (like posters, parts, or models) must be withdrawn within two business days of the completion of the trial and reduced reproductions or photographs substituted.

- (2) If there is no appeal, exhibits will be removed by the offering party within thirty days after disposition of the matter. When there is an appeal, exhibits returned by the district court will be removed by the offering party within ten days after written notice from the clerk. Exhibits not removed will be disposed by the clerk and the expenses incurred will be taxed against the offering party.
- (3) Parties shall bring an original and two copies of all exhibits to be offered at trial and a completed exhibit list (Appendix M) in addition to the copies previously exchanged by counsel.

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Rule 9007. General notice.

- (a) When the relief sought can only be granted on notice or after notice and hearing under § 102, except as to matters governed by LR 4001, the movant shall include conspicuously on the front page of the pleading this statement:

If you want a hearing, you must request one in writing and you must respond specifically to each paragraph of this pleading. You must file your response with the Clerk of the Bankruptcy Court within twenty days from the date you were served and give a copy to the person who sent you the notice; otherwise the court may treat the pleading as unopposed and grant the relief.

- (b) Certificate of service. Pleadings shall contain a certificate of service that states that all interested parties have been served, listing specifically the name, address, date, manner of service, and status of each party served, identifying the party as:

- (1) The party against whom relief is sought;
- (2) Attorney for party against whom relief is sought;
- (3) Committee appointed under the Code;
- (4) Authorized agent for committee appointed under the Code;
- (5) Twenty largest unsecured creditors;
- (6) Party claiming interest in the affected property;
- (7) Entities requesting notices under BR 2002(g); or
- (8) U.S. Trustee
- (9) Entities on whom the court has ordered notice.

- © If there is an order limiting the parties to whom notice must be given, or on whom the motion must be served, or on whom copies must be served; or if there is an order limiting the time to respond, the certificate of service shall state the entry date and enough substance of the order so that the existence of and compliance with it may be determined from the certificate of service.

- (d) Mailing labels. When the rules allow notice to be given to the other parties-in-interest by a person other than the clerk, within three days before the date he intends to mail the notices, he may request the clerk to furnish him mailing labels reproduced from the master mailing list kept by the clerk. These labels may be used to give the notices required by BR 2002.
- (e) Manner of service. All service required to be sent by a person other than the clerk shall be by first class mail, postage prepaid.
- (f) Contents of notice. If under the rules a party may act or get-relief after giving notice (without serving or filing a motion), the notice shall state with particularity what authority or relief is sought by the movant.
The notice shall state the general nature and substance of the relief sought; it may not simply refer to a pleading on file. A copy of the pleading may be served in lieu of a notice.

Rule 9013. Motion requirements.

- (a) Service of motions. Except for BR 4001, motions required to be served under BR 9013 and 9014 shall be served by ' the movant on: the entity against whom relief is sought and the entity's attorney; and if the relief will adversely affect the property of the estate, the movant shall also serve notice of the motion on:
 - (1) Committees appointed under the Code or its agent (if no committee has been appointed, on the entities in the list filed under BR 1007(d));
 - (2) Parties claiming an interest in the affected property;
 - (3) Entities that have requested notices under BR 2002(g); and
 - (4) Any trustee appointed in the case and the U.S. Trustee
 - (5) As the court directs.Before the expiration of the notice period, the movant shall file a certificate of service complying with the requirements of BLR 9007 and 1001(I).
- (b) Submission. Motions for which notice is required will be submitted on the day following expiration of the notice period. Motions which do not require LR 9007 notice shall be submitted on the twentieth day after service unless the

motion is accompanied by a motion for emergency consideration.

- © Contents of motion. Motions must state with particularity the relief sought, contain the specific code section, rule, or case authority on which the relief is predicated, and bear in the caption a designation of the paper's character under BR 9004 (b) . A memorandum of law may be included or may accompany the motion.
- (d) Contents of orders. A separate proposed order granting the relief shall accompany the motion, with only a brief citation of the statutory basis for the relief. The proposed order shall be accompanied by separate findings of fact if a hearing has been held at which evidence was heard supporting the findings.
- (e) Contents of responses. A party-in-interest who wishes to contest the relief requested in a motion shall oppose it by filing a response in the form in BR 7008. The respondent shall confer with the movant before filing the response to resolve the dispute. Responses shall include either a certificate that:
 - (1) A conference was held, a good faith effort to resolve the dispute was made without an agreement being reached, and the matter requires court determination, or
 - (2) It was not possible for the required conference to be held.
- (f) Emergency hearings. Movants or respondents may request an emergency hearing on a motion. The request for emergency hearing shall be filed with the motion or response and be accompanied by an order for an emergency hearing, containing places to designate the time, place, and courtroom. The request shall state with specificity why an emergency exists and be accompanied by an affidavit by the party or its attorney, certifying the nature of the emergency. Requests for emergency hearings must comply with paragraph (c).
- (g) Orders. By agreement or after a contested hearing, a proposed order must be filed that:
 - (1) States with particularity the relief granted or denied; and
 - (2) Lists the names and addresses of everyone entitled to notice of the entry of the order.

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Rule 9027. Removal and remand.

- (a) A party removing a civil action to the bankruptcy court, in addition to complying with BLR 7003, shall list names and addresses of all of the parties, designate on which service of process has been accomplished, and list the name, address, and telephone number of the counsel for every party. If service of process is necessary, the removing party shall comply with BLR 7004.
- (b) Applications for removal must be accompanied by copies of all papers that have been filed in the court from which the removal is sought.

- © Motions to remand must be accompanied by proposed recommendations for the bankruptcy judge and a proposed order for the district judge.

APPROVED:

APRIL 1, 1989

 \s
CHIEF JUDGE JAMES DeANDA
UNITED STATES DISTRICT COURT

APRIL 1, 1989

 \s
CHIEF JUDGE R. F. WHELESS
UNITED STATES BANKRUPTCY COURT

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COURTROOM ETIQUETTE

People who appear in court must observe these and other conventions of courteous, orderly behavior.

- A. Be punctual.
- B. Remain in attendance until excused. All persons sitting before the bar shall remain there during each session and return after recess.
- C. Dress with dignity.
- D. Address others only by their titles and surnames, including lawyers, witnesses, and court personnel.
- E. Stand when the court speaks to you; stand when you speak to the court, unless otherwise excused or directed. Speak only to the court, except for questioning witnesses and, in opening and closing.
- F. Avoid approaching the bench. Counsel should anticipate the necessity for rulings and discuss them before court is in session. When a bench conference is unavoidable, get permission first.
- G. Hand to the clerk, not the judge or reporter, all things for examination by

the judge.

- H. Stand when the judge enters or leaves the courtroom.
- I. Contact with the law clerks is ex parte contact with the court. Contact must be through the case manager.
- J. Assist the summoning of witnesses from outside the courtroom. Furnish the clerk and Electronic Court Recorder (ERO) with a list of witnesses showing the order they are likely to be called.
- K. Question witnesses while seated at counsel table or standing at the lectern. When it is necessary to question a witness about an exhibit, ask permission to approach the witness.
- L. Conduct no experiment or demonstration without permission.
- M. Do not participate in a trial as an attorney if you expect you may be called as a material witness.
- N. Avoid disparaging remarks and acrimony toward counsel, and discourage ill-will between the litigants. Counsel must abstain from unnecessary references to opposing counsel, especially peculiarities.
- O. Make no side-bar remark.
- P. Counsel are responsible for advising their clients, witnesses, and associate counsel about proper courtroom behavior.

APPENDIX A

- Q. Request the use of easels, light boxes, and other equipment well in advance so that they may be set up while court is not in session.

FOR ADDITIONAL FORMS AND ENCLOSURES, PLEASE REFER TO LOCAL RULES IN CLERK'S OFFICE.